

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA

FILED  
U.S. DISTRICT COURT  
AUGUSTA DIV.

2011 MAY 25 PM 12:27

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DUBLIN DIVISION

VERMAN O'HARO,

Petitioner,

V.

WALT WELLS, Warden,

Respondent.

CV 311-007

## ORDER

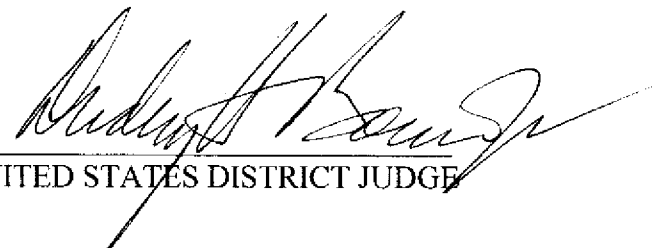
After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which objections have been filed (doc. no. 6). Petitioner commenced this case pursuant to 28 U.S.C. § 2241, but sought to challenge the validity, rather than the execution, of his sentence. (See doc. no. 1.) The Magistrate Judge recommended dismissal of the petition because Petitioner failed to meet the requirements for invoking the "savings clause" of 28 U.S.C. § 2255, which is necessary for Petitioner to challenge the validity of his sentence under § 2241. See 28 U.S.C. § 2255(e); Wofford v. Scott, 177 F.3d 1236, 1245 (11th Cir. 1999).

Most of Petitioner's objections center around his argument that the Court should obtain a copy of the trial transcript from Petitioner's trial in the United States District Court for the Eastern District of New York, in which he was found guilty of conspiring to import heroin, so that Petitioner may attempt to prove his actual innocence of that crime. (Doc. no. 6, pp. 1, 3-7.) In support of those objections, Petitioner cites Sawyer v. Holder, 326 F.3d

1363, 1366 (11th Cir. 2003) for the proposition that, once the savings clause of § 2255 “opens the portal to a § 2241 proceeding,” the proper inquiry is whether the petitioner can establish actual innocence of the crime for which he has been convicted. (Doc. no. 6, p. 5.) Petitioner’s argument overlooks the fact that the Magistrate Judge explicitly found that Petitioner failed to satisfy the three-prong test to invoke the savings clause of § 2255, and therefore, the “portal to a § 2241 proceeding” remains closed to Petitioner. (See doc. no. 4, p. 5.) Thus, Petitioner’s objections regarding obtaining his trial transcript are **OVERRULED**. The remainder of Petitioner’s objections are also without merit and are likewise **OVERRULED**.

Accordingly, the Report and Recommendation of the Magistrate Judge is **ADOPTED** as the opinion of the Court. Therefore, Petitioner’s motion to proceed *in forma pauperis* (doc. no. 3) is **DENIED AS MOOT**, the petition filed pursuant to § 2241 is **DISMISSED**, and this civil action is **CLOSED**.

SO ORDERED this 25<sup>th</sup> day of May, 2011, at Augusta, Georgia.

  
UNITED STATES DISTRICT JUDGE